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COMMISSION ON HUMAN RIGHTS

Forty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 February 1990, at 3 p.m.

Chairman:	Mrs. QUISUMBING	(Philippines)
later:	Mr. DITCHEV	(Bulgaria)

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*/ The summary record of the first part (closed) of the meeting appears as document E/CN.4/1990/SR.26; the summary record of the third part of the meeting appears as document E/CN.4/1990/SR.26/Add.2.

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Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment

(b) Status of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(c) Question of enforced or involuntary disappearances (continued)

The public meeting was called to order at 4.55 p.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES, INCLUDING:

(b) STUDY OF SITUATION WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL COUNCIL RESOLUTIONS 1235 (XLII) AND 1503 (XLVIII); REPORT OF THE WORKING GROUP ON SITUATIONS ESTABLISHED BY THE COMMISSION AT ITS FORTY-FIFTH SESSION

1. The CHAIRMAN announced, in accordance with established practice, that the Commission had examined in closed session, under Economic and Social Council resolution 1503 (XLVIII), the human rights situations in the following countries: Brunei Darussalam, Myanmar, Paraguay and Somalia. It had decided to defer until later consideration of the human rights situation in Haiti under the same procedure. In conformity with paragraph 8 of Council resolution 1503 (XLVIII), members of the Commission should make no reference in the public debate to the confidential decisions nor to any confidential material relating thereto. Since, however, it was the Commission's practice to disclose the names of the countries whose situations had been considered under the confidential procedure, it seemed only equitable to indicate that the human rights situations in Brunei Darussalam and Paraguay were no longer under consideration by the Commission under that procedure.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1990/12, 13, 15, 16 and 17 and Add.1; E/CN.4/Sub.2/1989/28 and 29/Rev.1; E/CN.4/Sub.2/1988/28 and A/44/708)

2. Ms. WESTERCAMP (International Federation of Action of Christians for the Abolition of Torture) said that the member associations of IFACAT, which was taking the floor in the Commission on Human Rights for the first time, were made up of Christians (Catholic, Protestant, Orthodox, Anglican and Quaker) and were independent of any political party or organization and of the Christian church authorities. The associations spoke out on behalf of any persons subjected to or threatened with torture, anywhere in the world and whatever their views or beliefs, and on behalf of anyone threatened with capital punishment. There were many cases for concern in that regard, but she wished to refer in particular to those of Turkey, Tibet, Haiti, Sri Lanka and Guatemala. Each member association of IFACAT called on its members to be vigilant in their own country and also undertook human rights teaching, particularly on the basis of the agreements signed by the Member States of the United Nations.

3. In order to spread the knowledge of the texts which prohibited torture, IFACAT was endeavouring to have the text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment circulated everywhere, with a view to promoting its ratification by all nations. The Convention on the Rights of the Child, particularly its article 37, was a new addition to an already large body of texts, as was the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the Death Penalty.

4. In the field of prevention, IFACAT noted that the Committee against Torture and the Special Rapporteur to examine questions relevant to torture had different but complementary mandates and functions. Knowing the value which a large part of world public opinion attached to the mission entrusted to the Special Rapporteur by the Commission on Human Rights, IFACAT hoped that his mandate would be renewed; it felt that any limitation of that mandate would be seen as a setback in the struggle against what was regarded by all States as a scourge.

5. With a view to boosting the mobilization of action against torture, IFACAT stressed the timeliness of urgently applying some of the recommendations made by the Special Rapporteur to examine questions relevant to torture, namely, the prohibition of incommunicado detention, the establishment of regular inspection procedures for places of detention, the trying of persons responsible for acts of torture and the diffusion of texts which made clear the duty to disobey orders to practise torture, particularly in regard to personnel entrusted with maintaining order. The consequences which might stem from too wide a gap between proclaimed principles and reality could not be too strongly stressed.

6. Mr. Ditchev (Bulgaria) took the Chair.

7. Mr. KALKE (International Association Against Torture) said that the Special Rapporteur to examine questions relevant to torture must be enabled to continue his work of unmasking injustices suffered by prisoners during their detention. Consequently, the Association would like to see the Special Rapporteur's mandate renewed. It also invited countries which had not yet done so to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; it continued to monitor the way in which situations developed in countries which, having signed the Convention, had nevertheless entered reservations, and to work against the practices of torture that still remained in some of the signatory countries.

8. In the United States, the persecution of political prisoners was directly linked to their resistance to oppression and their struggle to improve the quality of life of certain population groups (blacks, Puerto Ricans and indigenous Americans). They were in prison because they had stood up against oppression and injustice. Despite campaigns of disinformation, political prisoners were a reality in the United States. Some of them had been put in special quarters where they were under extra surveillance, involving video and audio equipment, had little time out of their cells and were subjected to frequent strip searches.

9. Although Chile had signed the Convention against Torture, it continued to use torture against political dissidents; it was alarming to see that, during the current transitional period, there were still over 400 political prisoners

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in that country. His Association called for the release of all political prisoners during the transition period. While the forthcoming change to civilian government in Chile was welcome, there was no guarantee that steps would be taken to restore an independent judicial system in which judges and lawyers could freely investigate the cases of torture and the disappearances which continued to occur in that country.

10. In El Salvador, the authorities had used torture against members of religious groups and workers for international bodies. The whole world had been scandalized by the death of a number of Jesuit priests in November 1989 as well as by the arrest, torture and deportation of several dozen workers for international bodies. He had himself interviewed some of them, who had told him that torture had been systematically applied to terrorize and extract information from people working among the poor. The international community must voice its general condemnation of the Salvadorian Government for continuing to violate international standard rules for the treatment of prisoners.

11. In Honduras, there were grave shortcomings in the administration of justice, as was shown by the number of extrajudicial executions that had taken place during 1989: 44 persons had been executed, 8 while in the custody of the national police. A case worthy of particular attention was that of Norberto Flores, who, while in hospital after surviving one attempt on his life, had been abducted by the secret police and then killed. The perpetrators of that crime had not yet been brought to justice, and witnesses had been threatened. Human rights defence organizations had reported over 240 cases of torture in 1989. Human rights activists, too, had been threatened, often with death, in Honduras.

12. The Honduran Government had taken hardly any action to dissolve paramilitary groups or groups within the police force itself. His Association was also concerned about the presence of foreign troops, namely, United States soldiers, which aggravated the situation; it invited the Special Rapporteur to investigate further the interference of foreign troops in the life of Hondurans and the possible consequences for the administration of justice.

13. The situation in Guatemala was likewise a cause for deep concern: torture and forced disappearances continued. Human rights defence organizations working in Guatemala reported an alarming number of deaths in rural areas: peasants and the representatives of indigenous communities had been assassinated by military forces. Extrajudicial executions had many times been preceded by torture (fingers, hands or arms cut off, or tongues cut out). In some areas massacres had occurred. He urged the Special Rapporteur to pay close attention to developments in Guatemala, and invited the Commission on Human Rights to consider giving higher priority to the question of human rights there.

14. In Iraq, the use of chemical weapons had been reported to the Commission and Sub-Commission at their 1989 sessions. Documentation also existed on the torture of children, on many cases of forced disappearance and extrajudicial execution, and of the deportation of thousands of people on religious grounds. Bombing operations in the south indicated that opposition forces faced growing difficulty. The Government of Iraq had invited the members of the Sub-Commission to visit that country to observe the situation. His Association would like to know whether the invitation had been followed up

and, if so, what the outcome had been. If there had been no observer mission to Iraq, the Commission on Human Rights could perhaps pursue the matter with the Government.

15. One further question which disquieted his Association was that of the impunity of persons involved in human rights violations. Torture had become less frequently a matter of inhumane treatment applied by one soldier or police officer, and more a systematic practice by an unpopular Government against its opponents to extort information, silence them or create a climate of social terror so as to weaken opposition. Unless and until such a system was dismantled, it could be asserted that torture had ceased, and there would be a constant fear of its resurgence.

16. Representatives of his Association had visited Uruguay, Argentina, Chile, Guatemala, El Salvador and Honduras, among other countries, where they had listened to families of disappeared persons and heard the testimony of those who had been tortured; they could affirm that the fear existed and that restoration of democracy had not eradicated torture. Many torturers were still at large, and those who designed electric-shock implements or had devised mock executions were likewise at liberty. For that reason, he urged the Commission to continue to study the question of impunity for violators of human rights. To affirm principles and do nothing to put them into effect was farcical.

17. Mr. del GRANADO (International Abolitionist Federation) said he was speaking on behalf of his organization and of the International Federation for Human Rights. During the first two weeks of February 1984, the Bolivian Congress had begun a "responsibility trial" of General Luis García Meza and 55 of his chief collaborators who, after a bloody coup d'état, had exercised despotic power in Bolivia from July 1980 to August 1981. In Bolivian law, a "responsibility trial" involved criminal proceedings against former Government officials for crimes committed in the discharge of their duties. Cases were brought first before the Congress and then before the Supreme Court, which passed sentence.

18. The Congress had in fact brought the case before the Supreme Court in February 1986. In the context of the huge difficulties confronting the new democratic system in Bolivia, no arrests had been ordered, creating a situation of impunity which had had negative consequences for the subsequent progress of the trial. Luis García Meza and the other defendants had been accused of infringements of the right to life, liberty and security of the person, violations of academic freedom, murders and massacres of political and trade-union leaders, various disruptions of the economy and interference with public assets. For the most serious crime, murder, Bolivian criminal law provided a maximum non-remissible penalty of 30 years' imprisonment. In April 1986, the case had been brought before the Supreme Court. In order to render a judgement, the Court had had to apply the Ordinary Code of Penal Procedure which, in his view, was inadequate in such cases. When summoned, the defendants had not appeared before the Court. In January 1989, García Meza had left the city of Sucre, the seat of the Court, and his whereabouts had since been unknown. On 25 July 1989, the prosecution had submitted a long list of its witnesses. To date, only 10 witnesses had been heard; such slowness imperilled the operation of justice. At that rate, a judgement might not be forthcoming before 1991.

19. There were underlying reasons for the situation which he had just outlined. The dictatorship had, in fact, represented a means of exercising power and of defending certain interests which continued to exist under the democratic and constitutional system currently in place in Bolivia. Furthermore, many persons who had been prominent under the dictatorship were currently active in major political parties and discharging constitutional administrative duties. The judiciary was of very limited effectiveness. Responsibility for the situation he had just described therefore, went beyond the Supreme Court. It was equally attributable to Congress, which had not shown any eagerness to move the case forward.

20. It was true that the new Government, which had come to power on 6 August 1989, was making efforts to consolidate democracy, but the crisis of the legal system remained worrisome. When former Colonel Luis Arce Gómez, the chief architect of the repression under the García Meza dictatorship and the latter's co-defendant, had been captured by the police, the new Executive had not deemed it necessary to bring him befor the Supreme Court. In his New Year address at the beginning of 1990, Mr. Jaime Paz Zamora, the constitutional President of the Republic of Bolivia, had stated that in the field of justice, it was not sufficient to replace individuals; thorough reforms were needed. The President of the Supreme Court had made similar observations at the beginning of the Court's 1990 session. Such reforms would help to create a new context for the "responsibility trial" of Luis García Meza and his co-defendants. Under those circumstances, it was to be hoped that the evidence-gathering stage could be completed in 1990, and that the verdicts - which were not subject to appeal - could be handed down shortly afterwards.

21. For their part, the Bolivian people had taken initiatives to speed up the trial, under the auspices of a committee which included the Bolivian Trade-Union Federation, the Standing Assembly for Human Rights, the National University, the families of the victims and several organizations which had instituted civil actions. The trial, the only one of its kind currently taking place, was symbolic because it placed on trial one of the dictatorships which had devastated Latin America in the recent past. Any verdict which might emerge from it could make an outstanding contribution to peace, the defence of human rights and democracy.

22. Mrs. Quisumbing (Philippines) resumed the Chair.

23. Mr. NDIAYE (Senegal) said that, in addition to the untiring efforts being made at the international level, such as those undertaken by the Commission, particularly under the procedures established by Economic and Social Council resolutions 1235 (XLII) and 1503 (XLVIII), the protection of human rights depended more directly on each State's domestic behaviour towards its citizens. More specifically, the protection of individuals from arbitrary arrest or detention, which was the subject of the item under discussion, depended on the administrative and legal conditions established by States and on their practical application, which was within the province of the officers of the judicial police and the magistrates, especially the examining magistrates.

24. In a democratic system, the officers of the judicial police should be placed under the direct supervision of the judicial authorities. At that stage, the major problem was the question of pre-trial detention a measure of which enabled the judicial police to hold a person in custody for

investigation purposes. He summarized the measures adopted in Senegal to limit pre-trial detention as much as possible in accordance with internationally accepted standards, including those contained in article 9 of the International Covenant on Civil and Political Rights. In the first place, pre-trial detention was under the supervision of the Office of the Government Attorney. The arrested person must be informed immediately of the reason for his arrest, information concerning which must be conveyed immediately to the Government Attorney, the only person authorized to renew - and then only once - the pre-trial detention period, which was limited to 24 or 48 hours, as the case might be. The hearing record and pre-trial detention register, which had to be kept, must state the reasons for the measure, the date and time at which it was first imposed, the length of interrogations and even the rest periods (the purpose of the latter being to prevent confessions from being extorted under the pressure of fatigue or torture).

25. The above measures, which had already been in effect for several years (since the Act of 27 February 1985), were among those recently proposed to the international community by the Special Rapporteur on questions relevant to torture, Mr. Kooijmans, in his report (E/CN.4/1990/17). In Senegal, another important innovation consisted of giving not only the Office of the Government Attorney but also the arrested person, his lawyer and a third party, even if not a relative, the opportunity of requesting a medical examination at any time. The protection of the rights of the arrested person also required careful regulation of the right to defence; the Senegalese penal system recognized the defendant's right to choose a lawyer and to make no statement except in his presence. The case file must also be transmitted to the lawyer. Pre-trial investigative periods were strictly regulated, and a defendant whose request for release pending trial had not been reviewed within the prescribed time-limits was automatically released. A person subjected to an arrest warrant or detention order who was not interrogated within 24 or 48 hours, as the case might be, had also to be released.

26. None the less, for the legal and administrative provisions whose main features he had just outlined to have a genuine impact, a competent, just, independent and impartial judiciary was necessary. In Senegal, the independence of the judiciary was enshrined in the Constitution, whose provisions were in keeping with the standards and criteria of the Basic Principles on the Independence of the Judiciary, adopted in 1985. However, quite apart from national rules and international instruments, the independence of the judiciary was above all a state of mind, a "personal creed".

27. Senegal had incorporated the Convention against Torture into its domestic law through an Act adopted on 16 June 1986, i.e. prior to the entry into force of the Convention (26 June 1987). His Government had acted quickly because it had been aware that the new Convention marked a major stage in the international efforts arising from Article 55 of the Charter, and also because it was imbued with black African humanism, which made equal and inalienable human rights the basis of freedom, justice and peace in the world. Article 6 of the Senegalese Constitution provided that "the human person is sacred and the State is obliged to respect and protect him". Faithful to its undertakings, Senegal had opened its doors to foreign observers and scrupulously submitted its periodic reports, particularly to the Committee against Torture; Senegalese law provided criminal penalties against anyone responsible for an illegal arrest if the arrested person was subjected to physical torture (article 337 of the Penal Code).

28. Unfortunately, it appeared from the report of the Secretary-General (E/CN.4/1990/15) that the Convention against Torture had so far been ratified by only 49 States. Yet the importance of Governments' moral, political and legal adherence to international standards was well known. Amnesty International, in particular, had understood that, and, in the context of a memorable campaign, it had encouraged all Governments to ratify the international instruments. He paid tribute to that organization, and to the non-governmental organizations in general, which spared no efforts in condemning the practice of torture everywhere in the world. It was to be hoped that the Commission would adopt a resolution reminding the international community of the need to give the Convention against Torture the universal acceptance it deserved.

29. Mr. RHENAN SEGURA (Observer for Costa Rica) said that a Government which resorted to torture acknowledged its inability to govern. Torture not only constituted suffering for the victim; it also corrupted the torturers and the system which tolerated them. Unfortunately, it was not an isolated phenomenon, but a universal manifestation of barbarism and dehumanization. It could not be justified by the fight against terrorism, guerrilla fighters or delinquency. Moreover, the revulsion which it aroused ran counter to the objectives cynically invoked to justify it.

30. It was not sufficient to recognize that torture was a crime; States which did so none the less often resorted to torture. For his delegation, therefore, it was imperative to ensure the implementation of the instruments in international law which protected individuals against torture. Provisions to that effect were already contained in the Universal Declaration of Human Rights, the Geneva Conventions of 1949, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX)), the International Covenant on Civil and Political Rights (art.7), the European Convention on Human Rights (art. 3), the American Convention on Human Rights (art. 5) and the Charter on Human and Peoples' Rights adopted by the Organization of African Unity. More recently, the Convention against Torture had been adopted on 10 December 1984, and the Inter-American Convention to Prevent and Punish Torture on 9 December 1985.

31. The implementation of those international instruments should be ensured by new and effective monitoring mechanisms, including, in particular, a system of visits to places of detention. In 1980, his delegation had joined with other Latin American delegations in submitting a draft optional protocol to the Convention against Torture that had been prepared by the International Commission of Jurists and the Swiss Committee against Torture, making proposals along those lines on the basis of the experience of the International Committee of the Red Cross. In 1989, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which established a system similar to that envisioned by Costa Rica in 1980, had entered into force; it was to be hoped that the system would soon be extended to other geographical regions.

32. He congratulated once again the Special Rapporteur on questions relevant to torture, Mr. Kooijmans, on his report (E/CN.4/1990/17), and took the opportunity to urge Governments to support the United Nations Voluntary Fund for Victims of Torture, which was carrying out humanitarian work of the greatest importance, by making contributions to the Fund.

33. Mr. GONZALEZ (Christian Democratic International), after commending the Special Rapporteur on questions relevant to torture and the Working Group on Enforced or Involuntary Disappearances on their reports (E/CN.4/1990/17 and E/CN.4/1990/13), said that his organization was concerned at the cases of disappearances and torture in Central America and the Caribbean.

34. In the first place, he drew attention to the fact that, on 1 November 1989, three leaders of the Haitian opposition, Evans Paul, Jean-Auguste Mesyeux and Marino Etienne had been arrested and subjected to brutal treatment before being shown on national television. On 13 December, Sergeant Beauchard, one of the men responsible for the movement that had resulted in the removal of General Namphy in September 1988, had also been arrested. According to the International Group on Human Rights and the Right to Health of Harvard University, which had carried out a fact-finding mission in Haiti from 26 December 1989 to 4 January 1990 and which had been able to interview some political detainees, Evans Paul "could not stand up", Beauchard "had difficulty seeing and hearing", Marino Etienne "suffered from high blood pressure", and Mesyeux "had difficulty in urinating because of the blows he had received". On 14 December, Normillien Maxime had been arrested at Limbé and had died six days later as a result of the torture inflicted on him. On 12 January 1990, Mr. Nally Beauharnais, Director of the Public Transport Union, had been arrested and, according to his family, ill-treated.

35. In Cuba, on 13 December 1989, Carlos Novoa, Vice-Chairman of the Cuban Christian Democratic Committee, had been arrested for the second time and subjected to ill-treatment in Guanajay Prison.

36. He welcomed the fact that Nicaragua had, like Costa Rica, ratified the International Covenant on Civil and Political Rights and the Optional Protocol thereto, and had signed the Convention against Torture. He appealed to the Governments of the other Central American countries to ratify those instruments also. Nevertheless, his organization was concerned to note that cases of torture were reported in all the Central American countries, except Costa Rica. In its special report on Nicaragua of October 1989, Amnesty International pointed out that treatment equivalent to torture had been frequent in that country during the state of emergency (page 3). The organization in question mentioned the torture, in particular by electric shocks, inflicted on a person who had been held in Rio Blanco Prison (page 28). Noting that torture was closely linked with disappearances, he pointed out that Ramon Ordoñez Ramírez, aged 16, had disappeared after having been seen in prison in a terrible state. The Nicaraguan authorities claimed that he had never been detained.

37. According to the latest report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13), it had transmitted to Governments, during its mandate, 18,425 cases of disappearances, of which 12,972 concerned Latin America and 5,916 Central America, with only Costa Rica, an oasis of respect for human rights, not involved in that calamity. The great number of cases and their persistence made it necessary for the peoples and Governments of the countries affected to adopt urgent measures with the collaboration of the international community.

38. It should be noted, however, that the Central American countries in particular were holding the attention of world public opinion and that the number of cases submitted to the Working Group and other United Nations bodies was governed by the sometimes selective zeal of some international bodies, not part of the United Nations system, which gave detailed accounts of the cases of disappearances reported in Guatemala, Honduras, and El Salvador, but said nothing about those that had taken place in Nicaragua. Such "disinformation by omission" must cease for, although it was not connected with the United Nations, the practice distorted the information made available to Member States and could affect the resolutions they adopted.

39. The problem of torture and disappearances should no longer form the subject of political manipulation, and only the interests of the victims and their families should be taken into consideration. In that regard, a distinction should be made between the responsibility of the actual or moral perpetrators of disappearances, that borne by the existing Government and that of the State. While the responsibility of the last was permanent, it was neither serious nor permissible, from a political, legal and ethnical standpoint, to accuse a Government of the crimes committed by Governments which had preceded it and under which those currently governing had themselves been the victims of persecution.

40. Furthermore, modern means of communication and technical progress made it possible to maintain an up-to-date record of prisoners and arrests, including the name of the detainee, that of the arresting official and the place where the arrest took place. Apart from exceptional cases, his organization found it unacceptable in the current day and age that a Government should be unable to give, within a relatively brief period, a breakdown of all the prisoners detained in its territory.

41. One of the prerogatives of the State was to defend itself against any attempt at destabilization, but it should entrust that task to police or intelligence units that were under the constant supervision of external authorities. Countries which had, whether officially or unofficially, a political police force or repressive security units should take measures to disband them promptly and to replace them by modern bodies whose officials would not violate fundamental human rights on the pretext of ensuring national security.

42. The Guatemalan Government had been the first in Central American to invite the Working Group, which had, in fact, visited that country in 1988. His organization had taken note of the invitation extended by the Government of Nicaragua and hoped that the Working Group would be able to visit that country in the near future, whatever the outcome of the elections. It called on the Salvadorian and Honduran Governments to take similar initiatives, which would make it possible to clarify a large number of cases of disappearances and prevent the occurrence of new cases.

43. His organization, recognizing the common destiny of the peoples of Central America, had encouraged the process of peace and reconciliation as soon as a proposal for a Central American parliament had been presented by President Cerezo. At a later stage, it had expressed its support at the time of the signing of the Esquipulas Agreements, which were to lead to the Tela and San Isidro de Coronado summit meetings. Without prejudice to other existing machinery, it wished to propose that the Central American countries

be provided, under United Nations patronage, with an evaluation mechanism that would make it possible to ensure, in all the countries of the region, continuous monitoring of the staff of prisons, including those under the control of the security organs of the respective countries, guaranteeing access to those establishments by independent national or international humanitarian organizations.

44. Mr. GRAVES (International Commission of Health Professionals for Health and Human Rights) said that one of the purposes of his organization (ICHP), which had been founded in 1985, was to protect medical, nursing and paramedical personnel who, throughout the world, worked in favour of human rights and acted in accordance with the internationally accepted Declarations and codes of conduct.

45. Over the years, his organization had had to deal with many cases of harassment of health workers who treated their patients without regard for their race or religion, refused to sign certificates of natural death when there was suspicion or evidence of torture or to give confidential information about their patients despite administrative measures or threats of torture or other forms of pressure from the law enforcement units of some countries, and who were prepared to denounce torture and challenge those who committed other human rights violations. On several occasions, ICHP had intervened on behalf of professionals in danger and protested to Governments which did not respect medical professional integrity. On the basis of a number of disquieting reports from many countries, it seemed that the problems in that field existed internationally on a large scale.

46. The National Medical and Dental Association of South Africa (NAMDA), which was affiliated to ICHP, had informed it of the deaths of two detained physicians in addition to that of Steve Biko, a medical student, in 1977. Several physicians in that country were also reported to have suffered from various forms of harassment by the security forces. The offices of NAMDA itself had been searched on several occasions by the security police.

47. In the Sudan, a large number of health professionals had been detained at Khartoum, following a strike called by physicians on 26 November 1989 to protest against the dismissal and arrest of several of their colleagues after the military coup on 30 June 1989. The President of the Medical Association of the Sudan, Dr. Maamoon Mohammed Hussein had been sentenced to death for participating in the strike and one of his colleagues to 15 years' imprisonment, while several others had been arrested and tortured. Many non-governmental organizations had called on the Government of the Sudan to stop its oppression of health professionals and to allow them to express their convictions. World public opinion had been shocked by those death sentences and arrests and ICHP had recently received confusing information indicating that the Sudanese Government had released the prisoners, but the President of the Medical Association was still threatened and many of his colleagues were still imprisoned.

48. In the Philippines, where President Aquino was trying to promote respect for human rights, paramilitary groups had prevented health professionals from exercising their rights. ICHP called upon the Government of the Philippines to strengthen its control over those groups and to ensure respect for the rights of health professionals. An ICHP affiliate in the Netherlands was currently engaged in an investigatory mission in the Philippines in order to

verify reports that the Government was not providing sufficient protection for health professionals. ICHP was awaiting the results of that mission in order to submit information to the Commission on Human Rights.

49. In the People's Republic of China, during the June 1989 events in Tiananmen Square, when the Chinese Government itself had committed human rights violations, health professionals had been prevented from caring for the wounded, and some had even been beaten, arrested or wounded when trying to do so. Troops entrusted with the task of ensuring compliance with martial law had entered hospitals, disconnected life-support systems and arrested wounded civilians.

50. Those few examples led to the conclusion that the United Nations should do more to impose respect for the declarations and codes of conduct it had promulgated, including the Universal Declaration of Human Rights, the Principles of Medical Ethics (1982), the Declaration against Torture (1975), the Standard Minimum Rules for the Treatment of Prisoners (1977) and related recommendations, and the Code of Conduct for Law Enforcement Officials (1979).

51. Health professionals were morally and legally bound by those various instruments. One essential provision in that regard was Principle 6 of the Principles of Medical Ethics stating that there could be no derogation from the foregoing five principles on any ground whatsoever, including public emergency. Hospitals and clinics had become part of the battlefield of war with doctors and nurses being forced, sometimes at gunpoint, to give confidential information, patients being arrested or killed, and their files seized by force. The families of health workers were sometimes threatened, their homes set on fire and illegally searched, and their consultations illicitly overheard; in addition, some of their organizations had been forbidden. If all those factors were taken into account, it was clear that Principle 6 was very difficult to live with.

52. ICPH therefore requested the Commission to develop instruments to support the health professionals who were acting in accordance with the declarations and standards adopted unanimously by the General Assembly.

53. Ms. SIERRA (Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM)) said that, at its ninth regular congress, held at Lima in November 1988, FEDEFAM had noted with great concern that the number of disappeared detainees continued to increase. At the time of the organization's foundation in 1981, the families that reported disappearances of persons had usually lived in countries under a dictatorship. It was regrettable that, despite the advent of a democratic form of government in a number of Latim American countries, the situation had not improved. Moreover, cases of torture of other practices typical of what might be described as outrages against humanity formerly infrequent had become commonplace. Having no other response to social conflicts than to carry out waves of repression, States counted on the complicity of the Judicial Power and refused to undertake investigations to punish the guilty parties. In most of the countries with a constitutional Government, the judiciary, which was supposed to be independent, was subordinated to the other branches of power. That was the case in Argentina, where missing children who had been found were sometimes returned, upon the judgement of higher courts, to the very families that had abducted them, so that such children were kidnapped for a second time.

54. Democratic in appearance, the Governments of the countries of Latin America and the Andean region were actually very repressive. The large numbers of disappearances, political assassinations and mass murders, indicative of the militarist policy and the action of paramilitary groups, were often carried out under the pretext of combating drug trafficking or ensuring national security. Other countries that had recently become democratic had introduced the principle of impunity for past crimes, so that a parody of reconciliation could take place. Such total impunity had been reaffirmed in Argentina with the amnesty decrees of President Menem. The commander-in-chief of the army had publicly called for the release of high officers and their return to office and honours, and a "just and legitimate struggle" had been invoked in order to cover up all past events.

55. The economic, political and social crisis that was raging in the countries of Latin America was accompanied by an increasing number of arrests, disappearances and murders. The cases of disappearances were punished even less frequently than other crimes, because that offence usually did not appear in the penal code, the military code covered up certain instances of injustice and investigations were perfunctory. There were also cases of enforced or involuntary disappearances in Asia, in the Philippines under the Marcos régime, and in Africa, involving 800 Saharan citizens in Morocco. The Governments were accomplices in those violations, and in no way whatsoever did they manifest the political will to remedy them. In Chile, the FEDEFAM hoped that the crimes committed during the Pinochet dictatorship would not go unpunished.

56. Such a situation must not be allowed to continue to spread to more and more countries. The international community must be alerted, and the Working Group must continue to discharge its mandate by urging the Governments of the countries visited to inquire into the fate of persons who had been arrested or who had disappeared. In those Latin American and other countries in which impunity was granted by law, it was important to emphasize that no law prevented investigating the fate of the thousands of persons still languishing in obscure prisons.

57. In particular, a declaration must be adopted as soon as possible on enforced disappearances, a crime that was inconsistent with all United Nations principles concerning the protection of persons. Such a declaration, which must be adopted by the General Assembly, should classify that practice as a crime against humanity and thus an offence under international law which was extraditable and not subject to statutory limitation and had no political or military significance. Persons perpetrating such crimes must not be eligible for amnesty or other measures of clemency that could prevent investigation of the facts and punishment of the guilty parties. Such individuals must not be granted political asylum and must not have the right to claim that they had been following orders or that the circumstances had been exceptional.

58. FEDEFAM urged the Member States to commit themselves to preventing and punishing that offence, to investigating cases of disappeared persons and to providing the necessary support to national and international human rights organizations so that they could carry out their work. Member States must also carry out, as a matter of urgency, the requisite studies for preparing a draft international convention on the question so as to strengthen international prevention and establish the legal framework for punishing that offence as a crime under international law.

59. Ms. PERREGAUX (Centre Europe-Tiers Monde (CETIM)) said that, at the Commission's forty-fifth session, CETIM had voiced concern about the Saharan civilians in the areas of Western Sahara occupied by the Moroccan army and administration, adding that it had great expectations of the meeting, in January 1989, between King Hassan II and officials of the Frente POLISARIO. Unfortunately, that dialogue had been broken off despite the military truce at the beginning of 1989 and the decision, taken in May 1989, to release 200 prisoners of war, some of whom had been held for more than 10 years and who were often in poor health or had reached an age that had justified a humanitarian gesture in their favour. According to one of the members of the CETIM who had met with them recently, those persons were desperately awaiting a settlement after the Moroccan Government had initially refused to receive them, stating that such a gesture did not form part of the peace proposals accepted by the two parties. It was common knowledge, however, that only a responsible attitude, in keeping with resolution 104 of the Organization of African Unity and General Assembly resolution 40/50, would make it possible to put an end to human rights violations in that part of the world.

60. The occupied areas of Western Sahara had also seen other tragic situations of that nature, which CETIM was duty-bound to denounce in order to break the silence maintained by too many countries, in particular certain States in Europe, so as not to reveal the true face of a country that resorted to repression at home and colonial war abroad, with all the cases of imprisonment, torture and enforced disappearance that that entailed.

61. It was important in particular to draw attention to the cases of many Saharan families whose relatives had been arrested for having asserted their identity and who had since disappeared. The few persons released had told of horrible tortures inflicted in prison that were unworthy of any Government that respected the human person. Established in August 1989, Association of Relatives of Saharan Prisoners and Missing Detainees had compiled a list of 857 cases of disappearances. Three of its members had testified at Geneva in December 1989, and the report of the Working Group on Enforced or Involuntary Disappearances reflected the whole extent of the tragedy. One hundred and twenty further disappearances had taken place since the visit of the technical omission of the United Nations in November 1987. On 10 January 1990, 3 persons aged 16 to 30, sent by force like hundreds of other young people to Moroccan cities, where they had to find work and means of subsistence, had been arrested near Zagora while attempting to flee. CETIM had received irrefutable accounts of attempts that had been made to rid Western Sahara of all human presence, to distort the results of the referendum that was to be held and to force the assimilation of potential resistance fighters. Despite the benefits offered to those youths, many of them sought to escape from Morocco. Those who had succeeded reported new cases of disappearances and the non-return of prisoners. The courts continued to take no action, and torture was frequent. As for their relatives, they had no means of recourse, since lawyers refused to defend them.

62. CETIM called upon the Commission to consider very seriously the situation in the occupied areas of Western Sahara and reminded the Moroccan Government of the commitments it had made in signing the Fourth Geneva Convention of 12 August 1949. It hoped that the dialogue between the Moroccan Government and the Frente POLISARIO would be resumed and that the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on questions relevant to torture would consider, as a matter of priority, the violations of human rights in Western Sahara.

63. Mr. TEITELBAUM (American Association of Jurists) said he would like to see the Sub-Commission's Working Group on Detention put the finishing touches to the draft declaration on the protection of all persons from enforced or involuntary disappearances so that it could be submitted to the Sub-Commission at its August 1990 session. The discussions of the Working Group, the numerous observations communicated by Governments, non-governmental organizations and the Working Group on Enforced or Involuntary Disappearances and the draft convention prepared by the Inter-American Commission on Human Rights could provide a sufficient basis for producing a definitive draft.

64. It was encouraging to note that 49 countries had adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; unfortunately, however, only 23 countries had made the declaration provided for in articles 21 and 22 of that Convention. In any event, his organization considered that the fight against torture would not take on its true dimension until States opened wide their doors to the Committee against Torture and the Commission's Special Rapporteur.

65. In Argentina, a group of relatives of persons who had disappeared between 1976 and 1983 had, in December 1989, filed suit against the State before a federal judge to have the court declare that the State had not respected its obligation to give missing persons and their relatives effective means of recourse, had not made the files available to individuals and courts and had not provided true, detailed and documented information about how it had dealt with cases of missing persons. The plaintiffs had also asked that the State be ordered to surrender all documents concerning disappeared persons that were kept on the premises of the army, the police or the Ministry of the Interior, including those concerning the decision taken by the army general staff in November 1983, on the eve of the coming to power of a constitutional government, to destroy documents regarding so-called anti-subversive operations, and in particular the list of documents destroyed. The plaintiffs also asked that the State be ordered to provide detailed information on the material, administrative and legal treatment of cases of missing persons by all its bodies and civil servants, without exception.

66. A series of measures undertaken by the State following the disappearances, in particular the devices employed to delay legal proceedings, the destruction or non-communication of documents, the fabrication of false information and the drafting of a number of specific laws, seriously interfered with the efforts to shed light on the fates of virtually all the missing persons. The decree granting amnesty to the last members of the armed forces being prosecuted had also deprived the relatives of the missing persons of the sole remaining possibility of obtaining information of official origin, i.e. information that the legal proceedings would have brought to light. Those relatives had thus been deprived of their rights under article 25 of the American Convention on Human Rights and article 10 of the Universal Declaration of Human Rights.

67. The case of Argentina was a typical one. The arrest, torture and murder of thousands of citizens under the dictatorship had been followed, after restoration of the constitutional order by trials that, while exemplary in many respects, had still been subject to restrictions, as admitted by the courts themselves in their verdicts, by increasing pressure brought to bear by the armed forces to obtain impunity for virtually all those responsible and by what appeared to be complete uncertainty regarding the face of the missing

persons. The granting of amnesty or of a measure of clemency to persons suspected of having committed abductions or torture was a flagrant violation of the provisions of article 4, paragraph 2, of the Convention against Torture. He also referred to paragraphs 181 and 184 of the judgements by the Inter-American Court of Human Rights, 29 July 1988, in the case of VelásquezzRodriguez versus Honduras, concerning missing persons. According to paragraph 181, the obligation to investigate the facts continued to apply as long as uncertainty persisted about the fate of the missing person. According to paragraph 184, the principle of international law that affirmed the identity and continuity of the State meant that responsibility continued to obtain regardless of any change of Government that might have taken place. Those provisions should be borne in mind by the Governments of many countries in which disappearances had occurred.

68. His organization had received from the Association of Relatives of Saharan Prisoners and Missing Detainees a list containing detailed information on 120 persons who had disappeared from 1987 to January 1990 in Western Sahara and Morocco. That list was available to the delegation of Morocco, and he hoped that the authorities of that country would provide information on what had become of the persons concerned.

69. Humanitarian organizations in Guatemala had also notified his organization of three recent cases of disappearances in that country: Jorge Arturo Pérez Jacinto, 54 years old; Oscar Armando Pietrasanta García, 24 years old, a law student abducted on 6 February 1990; and Dr. Carmen Valenzuela, paediatrician, university teacher and president of the Association of Women Doctors, abducted on 10 February 1990. His organization had also been informed of the disappearance in Peru, in December 1989, of Javier Antonio Alarcón Guzmán. The American Association of Jurists called upon the Commission to express its concern as soon as possible to the authorities in Guatemala and Peru in connection with those disappearances.

The summary record of the third part of the meeting appears as document E/CN.4/1990/SR.26/Add.2.

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Forty-sixth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 15 February 1990, at 3 p.m.

Chairman:	Mrs. QUISUMBING	(Philippines)
later:	Mr. DITCHEV	(Bulgaria)
	Mrs. REGAZZOLI	(Argentina)
	Mrs. SINEGIORGIS	(Ethiopia)

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(c) Question of enforced or involuntary disappearances (continued)

* The summary record of the first part (closed) of the meeting appears as document E/CN.4/1990/SR.26. The record of the continuation of the meeting appears as document E/CN.4/1990/SR.26/Add.1 and Add.2.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

(agenda item 10) (continued) (E/CN.4/1990/12, 13, 15, 16, 17 and Add.1; E/CN.4/Sub.2/1989/28 and 29/Rev.1; E/CN.4/Sub.2/1988/28 and A/44/708)

1. Mr. WAGNER (International Human Rights Law Group) said that his organization, which was addressing the Commission on Human Rights for the first time, was composed of a non-partisan group of lawyers committed to promoting civil and political rights through the application of international human rights law. Article 9 of the Universal Declaration of Human Rights provided that no one should be subjected to arbitrary arrest, detention or exile. Article 9 of the International Covenant on Civil and Political Rights also provided for the same protection whereas article 10 provided that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. Those provisions also included a ban on torture, which often occurred during arbitrary detention. However, arbitrary arrests and detentions had not ceased. The Covenant had not been universally ratified and the provisions against arbitrary arrest and detention were not among the non-derogable rights.

2. The General Assembly, in its resolution 43/173 of December 1988, had therefore adopted a Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, which could serve as a standard and as Mr. Kooijmans had noted in his report, compliance with them would make torture during detention or imprisonment virtually impossible. The Body of Principles was not, however, universally applied. Under the martial law imposed by the authorities of the People's Republic of China, in 1989, the police and army had arrested and held hundreds of Tibetans in detention for months, without any charge, for peaceful participation in independence activities, demonstrations and distributing pamphlets. While the Group took no position on the question of Tibetan independence, it condemned the pattern of arbitrary detention by China, which, although not a party to the International Covenant on Civil and Political Rights, should at least respect articles 10 and 11 of the Body of Principles, which provided that anyone arrested should be promptly informed of the charges against him and heard by a judicial or other authority; martial law could not justify derogation from those provisions. Although principle No. 6 prohibited torture in all circumstances, Tibetan detainees were allegedly frequent victims of various forms of torture, that sometimes caused death as the marks visible on the bodies collected by families showed.

3. In Sudan, the military coup of 30 June 1989, had been followed by a suspension of the Constitution and the imposition of a state of emergency. Three hundred persons had been arrested immediately, many of whom were still in detention without charge. Journalists, trade-unionists and doctors had been imprisoned. One doctor had been sentenced to death by a military court

after having been tortured. Sudan had, however, signed the International Covenant on Civil and Political Rights but it had respected neither the Covenant nor the Body of Principles under which a state of emergency could not be used to justify arbitrary detentions, detainees were to be allowed to have legal counsel, and any form of detention or imprisonment had to be ordered by some judicial or other independent authority. In July 1989, however, military courts had been established with jurisdiction over civilians. In August, 57 judges who had protested were dismissed from their posts and at least 20 were detained. The execution of civilians and combatants in military custody without any judicial process proved that there was no effectively independent judiciary.

4. The Group requested the Commission to give particular attention to the systematic use of arbitrary procedures and, believing that the Body of Principles could be a valuable instrument in providing protection against arbitrary arrest and detention which often accompanied the use of torture, requested the Commission to authorize a study on the means of educating States and individuals regarding the United Nations Body of Principles and of assuring its universal application.

5. Mrs. Sinegiorgis (Ethiopia) took the Chair.

6. Mrs. BECK-HENRY (World Movement of Mothers) recalled that her organization had no particular party alignment, was independent of any régime and encompassed associations of mothers from many countries in the world, from all social strata and beliefs and that its members, irrespective of where they lived, had the same problems, encountered the same human rights violations, shared the same suffering and were seeking the same solutions. On their behalf, she called for an end to the strife that created suffering, brought death and sorrow and demanded once again that wars and guerrilla fighting should cease and that political prisoners should be released. She encouraged all women to unite and pool their energies in the service of justice and peace.

7. Mrs. GRAFF (International League for the Rights and Liberation of Peoples) said that the deteriorating human rights situation in the Philippines furnished little evidence of the passion for democracy claimed by the President of that country. The Philippines, in 1988, was the most dangerous place for human rights monitors and it was said that there had been more arrests in the first three years of the Aquino Government than during the last three years of the Marcos régime. Those arrests, of which only 2.5 per cent were legal, were admittedly for only a short time but the victims none the less ran the risk of being tortured, especially during the initial period, or of being summarily executed. Some 190 persons had been victims of summary executions. Although Mrs. Aquino had claimed that torture had no place in a democracy and its use could not be justified in counter-insurgency, and although the Philippines had ratified the Convention against Torture, a systematic pattern of torture by the military and paramilitary forces was reported to have been re-emerging, since 1987, and with 427 cases in 1989. Since March 1966, 20 per cent of the persons arbitrarily arrested and detained were allegedly tortured and many had died.

8. Carlito Jintalan, a suspected member of the New People's Army (NPA), was allegedly tortured after he and three other members of the army had been arrested and taken to the camp in Sorsogon. Although the military had denied his arrest they had themselves deposited his body in the hospital where it was

located. The Medical Action Group - Philippine Action against Torture (MAG-PACT) reported that, on 15 March 1989, 10 people had been arrested in Nueva Ecila and 7 of them had been tortured. Out of the 25 persons that that Group examined on 31 July 1989, 15 showed signs of torture. In the paragraphs on the Philippines in his report, Mr. Kooijmans noted the arrest in Metro Manila on 12 September 1989 of 25 persons who were still being detained without any charges being brought against them in the camp at Bagong Diwa, Bicutan, and who had been subjected to various kinds of torture and ill-treatment to make them confess to membership in the New People's Army. In 1988, the incidence of enforced disappearance rose to unprecedented levels and in 1989, despite a mild slackening, it continued, mainly affecting members of human rights defence groups, whom the military often branded as communists. Thus, trade unionists had disappeared after participating in a rally in Manila on 1 May 1989.

9. The Philippines had, in fact, invited members of the Working Group to visit the country and the Government of the Philippines had expressed its determination to defend human rights. However, the Constitution and the laws were not sufficient; they had also to be applied and those found violating them punished. However, no member of the army, the police or the paramilitary forces had been found guilty even in such flagrant cases as the Lupao massacre where Mrs. Aquino herself had met the survivors and witnesses, or the Mendiola massacre which had taken place less than a kilometre away from the presidential palace.

10. In Sri Lanka, the cases of torture, detention and disappearance deserved the attention of the Commission which had debated it under various items of its agenda since 1983. The adoption of a resolution by the Commission in 1987, the Indo-Sri Lanka Peace Accord in 1987, the arrival of the Indian Peace-Keeping Force, the devolution of political power to the Tamils in the north-east were expected to halt the deterioration of the human rights situation. On the contrary, the number of extra-judicial killings, mass arrests, detentions, torture and disappearances had grown. Detainees were often beaten by members of the Indian Peace-Keeping Force and the Sri Lankan authorities, people were tortured during interrogation and many forms of ill-treatment had been reported. Many of those found dead along roads and rivers had been tortured or had died in detention.

11. In the north, the former Indian Minister of Defence had admitted that the Indian Peace-Keeping Force continued to keep people in detention and to arrest Tamils in large numbers. In 1989, thousands of Tamil youths had been forcibly conscripted in order to fight the LITE guerrilla group. The situation had worsened even more in 1989, particularly in the south, and the Tamils had also been subjected to ill-treatment at the hands of their own activists. From 5,000 to 8,000 Tamil youths were reportedly detained in the south, many of whom had allegedly been tortured. In 1988 and 1989, Amnesty International reported 72 cases of disappearances at the hands of the Indian Peace-Keeping Force and the Sri Lankan forces. The latter denied those figures. For example, Mr. Fernando had been arrested by a man wearing Sri Lankan uniforms on 27 August 1989, and Mr. Layanaracheni had been abducted by unknown persons on 25 August. The police later admitted that the latter had been detained by the police in Tangalle. He was reportedly brought subsequently before an inspector of the Colombo Counter-Terrorism Unit who noticed external injuries. He reportedly told the inspector that they were the result of

police torture and he died on 2 September in Colombo General Hospital. Other cases of torture had been reported for example, by David Honsego in The Financial Times on 18 January 1990.

12. In conclusion, she urged the Commission to investigate those human rights violations, in particular, cases of detention, torture and involuntary disappearances and to ask India to expedite the withdrawal of its Peace-Keeping Force and the Sri Lankan Government to lift the state of emergency and repeal the repressive laws.

13. Mrs. BARNES DE CARLOTTO (International Movement for Fraternal Union among Races and Peoples), speaking in her capacity as Chairman of the Association of the Grandmothers of the Plaza de Maio, drew the Commission's attention to the tragedy of the children who disappeared between 1976 and 1983 during the Argentinian military dictatorship. A democratic régime had replaced the dictatorship and everyone hoped that it would overcome the serious economic difficulties it was facing. However, there could be no real democracy without justice. In the meanwhile, the plethora of iniquitous measures was continuing and, after the previous Government had enacted the Finality Act and the Due Obedience Act, which was tantamount to granting amnesty to known torturers, the present Government had promulgated five decrees in 1989, granting a pardon to hundreds of members of the armed forces charged with particularly serious violations of human rights. Such behaviour constituted a flagrant violation of the Constitution under which pardon could not be granted to condemned persons. Furthermore, there was some question of pardoning senior officials of the Military Junta who had been responsible for State terrorism and had been tried and sentenced by the civil courts. An attempt was thus being made, in fact, to justify or to deny the disappearances, torture, murders, concentration camps and abduction of children which on top of being a denial of justice was a threat to an emergent democracy.

14. As a result of international pressure, court cases involving the search for missing children had not been affected by the provisions of the laws of immunity but, in actual fact, justice was not being done and hundreds of children were still living with the families that had abducted them. The Argentine Government had taken no political decision regarding them and no one knew whether any specific measures were being contemplated to address that tragic problem.

15. In 12 years of unremitting struggle, the Grandmothers of the Plaza de Maio and the families of the abducted childred had succeeded in finding only 49 children and the last one had been dead. Those families, which knew the whereabouts of particular children encountered formidable difficulties in having the children restored to them through legal channels. The Judiciary sometimes unduly favoured families that had taken the children away illegally. Courts also refused to order the necessary measures, such as blood tests, to enable positive identification of the children. Lastly, some of the children were abroad, where they had been deprived of the freedom of their rights.

16. It should be noted that on 5 September 1989, the Supreme Court of Justice had delivered a ruling making grandparents ineligible to be parties in cases involving the search for children, thus denying them any right to act on behalf of their grandchildren.

17. The Grandmothers of the Plaza de Maio appealed to the Commission to recommend to the Argentine Government the adoption of prompt and effective measures for recovering the hundreds of children who were still missing. It should call upon the President of the Republic of Argentina to use the powers vested in him by article 86, paragraph 1 of the Constitution, and to ascertain why the Argentine judicial system did not defend the children who had been abducted and why it sought to equate families that abducted children with legal adoptive families. In addition, the Argentine Government should be reminded of the commitments it had made in ratifying the two International Covenants on Human Rights, which prohibited any decision granting immunity to persons guilty of crimes against humanity. The Commission should recommend to the General Assembly that it should expedite the drafting of a declaration on enforced or involuntary disappearances, the international convention on the prevention of disappearances and the convention on the rights of the child with a view to making them binding instruments, to prevent the recurrence of such violations of human rights.

18. Mr. SANIDAD (Regional Council on Human Rights in Asia) deeply regretted the continued violations of fundamental human rights in the countries of South-East Asia during the past year. In Singapore, under the internal Security Act, the Government was authorized to arrest without a warrant and keep in detention for a period of up to 30 days anyone who had acted or was likely to act in any manner prejudicial to the security of Singapore. If the authorities subsequently released him, they could restrict his freedom of speech, movement and association as well as employment and place of residence for a period of up to two years. They could also issue a detention order of up to two years against him, which was renewable and not subject to any judicial review.

19. Similarly, in Malaysia, under its Internal Security Act, the Government had unrestricted powers of search and arrest in respect of anyone suspected of any action prejudicial to the security of the State. Suspects could be arbitrarily arrested and detained without a warrant; they could be imprisoned and detained for periods of up to two years on the mere issuance of warrants, which were not subject to any judicial review and which could be renewed and extended indefinitely.

20. In the Philippines, although the Government had committed itself to restoring democratic rights, supposedly protected by the new Constitution, an alarming number of persons had been arbitrarily arrested and placed in detention or had disappeared during the past year. On 26 April 1989, Nonna Santa Clara and Angelina Llenaresa had been abducted by military and intelligence services personnel and had not been seen since. Their cases were still pending before the Supreme Court. Victor Lanta Matias and his father had been abducted from their home on 27 October 1989 by members of the military and paramilitary forces. The father, who was subsequently released, said that they had been beaten and that he understood that his son had been taken to the camp at San Isidro and at Tambo, but he had had no news of him. On 25 April 1989, Ben Allorque, co-Chairman of the Justice and Peace Commission of the Association of Major Religious Superiors in the Philippines was chased and arrested without a warrant by the military and police personnel in Manila while leaving a social service centre for released political prisoners. He had been released subsequently. On 16 November 1989, Eric Torres, the chairman of one of the teachers' organizations had been

abducted following demonstrations by teachers who were demanding an increase in salary. Only after charges of sedition had been filed against him did the police acknowledge having him in custody. Most of the persons subjected to arbitrary arrest, detention and enforced disappearances were critics of the Government or leaders of peoples' organizations. In contrast, after the failure of the coup by members of the armed forces of the Philippines, the mutineers who had killed several civilians and damaged property were allowed to return to their barracks fully armed. The Regional Council called upon the Government of the Philippines to honour its commitments under the International Covenant on Civil and Political Rights and other international human rights instruments.

21. Mr. WADLOW (International Fellowship of Reconciliation) urged international bodies and non-governmental organizations to pay special attention to the issue of states of emergency with three aspects in mind: first, a critical analysis, which the NGOs were able to carry out with the necessary objectivity, of the political, economic and strategic conditions that led a Government to impose martial law; second, an analysis of the characteristics of states of emergency, the consequences of martial law and in particular, the violations of fundamental human rights, which constituted the bulk of the Special Rapporteur's work; third, to study the means by which a Government, which found itself in an impasse as a result of its past policies, could end a state of emergency with the assistance of the world community. The last and most important aspect flowed directly from the first two.

22. In Tibet, the Government of China had established martial law on 7 March 1989 in Lhassa and other regions, following demonstrations calling for autonomy, the safeguarding of Tibetan cultural identity and better economic conditions. Those demonstrations, which enjoyed wide popular support, were rooted in a situation of long standing, namely 40 years of repression and mismanagement, deliberate efforts to destroy Buddhist culture, the exploitation of natural resources and the inflow of Chinese settlers. The Chinese authorities could maintain the present socio-economic system only by the threat of the use of force, a threat not justified by any likelihood of violence on the part of the Tibetan population since the vast majority was Buddhist and non-violent. The Chinese authorities had imposed a repressive policy under the cloak of the martial law, instead of regarding the non-violent demonstrations as symptomatic of a crisis which they should have settled by negotiation.

23. The introduction of the state of emergency went hand in hand with death threats and the risk of torture. There had been reports of executions in the prisons or military camps, but it was impossible to ascertain whether those reports were accurate. The police and the military had arrested non-violent opponents who had called for democracy and self-government, had written to the United Nations or had participated in ill-defined counter-revolutionary activities. Those who were arrested were held incommunicado, without being charged, and sent to labour camps, without trial. A climate of terror had been deliberately created.

24. The measures taken under the cover of martial law would make a lasting impact especially in the economic area. The domination exercised by the Chinese settlers had reduced the standard of living of the Tibetans, who were not allowed to take part in the decision-making process. His organization urged the Chinese Government to lift martial law, to allow visits by diplomats

and representatives of NGOs and the peaceful expression of the political, social and cultural opinions on the future of Tibet. As the Special Rapporteur had said in his report, the state of emergency should be considered as a warning. His recommendation of allocating more resources for the studies of states of emergency by the Centre for Human Rights should therefore be followed.

25. Mrs. de LEON ESCALER (Philippines) commenting on the reports by Mr. Kooijmans (E/CN.4/1990/17 and Add.1) and Mr. Tosevski (E/CN.4/1990/13), explained that the Constitution of the Philippines prohibited the infliction of cruel, degrading or inhuman treatment, physical or psychological punishment on, as well as the use of torture, force, violence or threats against persons under investigation, detainees or prisoners. The Constitution made provision for compensation for victims of torture or similar abuses. Police and military personnel received special training in human rights.

26. Mr. Kooijmans had in fact emphasized that allegations of torture made against Governments were not always borne out by the facts, that their number was not always the outcome of the human rights situation in those countries and that it was easier to collect information about the internal situation in a country which had a more open society than in others. The press in the Philippines, which was the freest in the world, reported on anything newsworthy not only in the urban centres but in the smallest hamlets and whereas it had been controlled and manipulated under the Marcos régime, the pendulum had swung perhaps too far in the opposite direction, at a time when transparency was the order of the day. Various accusations of systematic and continual violations of human rights had thus been distorted. The Philippines had always recognized that objective non-governmental, national and international organizations played an important role in protecting human rights and the Philippine Commission on Human Rights had established links with some of them in human rights education and in reporting violations. Unfortunately, some NGOs continued to level accusations against the Philippines which they did not substantiate and refused the Commission's offer to exchange information on them. They also refused to make their reports available to the Government of the Philippines in a spirit of reciprocity and to exhaust all domestic remedies before submitting them to various international authorities. One therefore suspected that their information and their statistics were inaccurate or that those organizations had hidden motives.

27. The Government of the Philippines was aware that simply enacting laws would not by itself stop human rights violations and that lapses continued to occur, but magnifying those lapses was of no help to the victims. The lapses even spurred on the Philippine Government to strengthen its defence of human rights as guaranteed by the Constitution and the law as well as by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

28. Taking up the specific cases mentioned in Mr. Kooijmans' report, she said that Belen Tabamo had been arrested on 10 February 1989 after a military encounter and had been charged with attempted murder and illegal possession of firearms. The court had dismissed the first charge but tried her on the second one and acquitted her. She was released on 12 September 1989. The Commission on Human Rights had visited her and had found no trace of physical

torture. Her case was closed. Rafael Olite had been arrested on 8 June 1989 by the intelligence services and accused of urban terrorism. He claimed to have been tortured in prison. He was currently on trial for illegal possession of firearms and he was represented by a lawyer. Investigators of the Philippine Commission on Human Rights had visited him in prison and found no evidence of torture; furthermore, he was unable to identify the persons who allegedly tortured him. The Medical Action Group which claimed that Mr. Olite had been tortured submitted no evidence of such torture and the case was still under investigation pending new developments. With regard to Mr. Bustamante, Mr. Kooijmans' report (paras. 125 and 126) reflected the situation fairly. However, Mr. Bustamante seemed to be more interested in waging a propaganda campaign in Europe against the Philippine Government than in presenting himself before the examining judge. Preliminary investigation of the charges against his two alleged torturers would be dismissed if he or other witnesses failed to identify them.

29. According to paragraph 121 of the report (E/CN.4/1990/17), Mr. Samuel Sabadalas had filed a complaint with the Philippine Commission on Human Rights that he had been arrested, detained and tortured by the military authorities. On 23 December 1988, a petition for habeas corpus had been filed in a court, which had released him on 26 December 1988 into the custody of his brother. Mr. Sabadalas, was unable to substantiate the claim that he had been ill-treated. On 27 July 1988, Charles Reyes and 24 other persons were allegedly arrested by members of the paramilitary forces. The Quick Reaction Team of the Philippine Commission on Human Rights, composed of lawyers and investigators on call 24 hours a day, had confirmed that those persons had been taken to Camp Bagong Diwa, Bicutan, where they had been interrogated. Only nine of them had been detained and formally charged with violation of the Anti-Subversion Act. The others had been released. The Quick Reaction Team was currently gathering information on a considerable number of torture allegations and the Philippine Commission on Human Rights expected to conclude its investigations shortly. The Philippine Government saw to it that all complaints concerning torture were thoroughly investigated but the parties were required to produce even a modicum of evidence, especially in cases where no traces of torture were visible. The airing of completely unfounded allegations of systematic torture for propaganda purposes was regrettable. The Government of the Philippines had invited Mr. Kooijmans to visit the Philippines and he was scheduled to visit the country during the course of the year.

30. According to Mr. Tosevski's report on enforced or involuntary disappearances there had been 36 cases of disappearances in 1989, which brought the total in the Philippines to 456. Those figures, however, included the 371 cases that had occurred during the Marcos régime, 6 of which had previously been clarified. Some dated back to 1970 and the present Government could no longer locate the whereabouts of the disappeared persons, because of the absence of witnesses or because of apathy on the part of the relatives. Despite everything, on 13 December 1988, Mrs. Aquino had created a special Human Rights Committee composed of representatives of the Government and of private human rights groups to deal with those disappearances. As one of the lead agencies comprising the Committee, the Philippine Commission on Human Rights had established investigating teams, which by the middle of 1989 had dealt with 83 cases. In 70 of those, the investigations had yielded negative results, either because no witnesses were available or because the families

had resigned themselves to the death of the disappeared persons. In four cases, the bodies of the missing persons had been found and identified by the relatives and, in six other cases, the missing persons had been found alive.

31. With respect to the disappearances that occurred in 1989, Carlos Vina, who was reported to have been abducted by armed men on 13 April 1989, had been found alive by investigators of the Philippine Commission on Human Rights and was currently staying with his nephew. Similarly, Luisita Uy and her husband Erlinda Escudero Uy were in Camp Lucban in Samar province, and they had told an official of the Commission that they wished to remain there for fear of reprisals by their former comrades in the rebel movement. They had also said that they were willing to co-operate with the military authorities in the anti-insurgency campaign. The Philippine Government regretted that the Working Group on Disappearances had postponed its visit and hoped that it would be able to visit the country during the present year. The Government offered its full co-operation, in a climate of openness and transparency, and hoped to demonstrate that its commitment to human rights was not mere lip service.

32. Lastly, she noted that the decision to declare a state of emergency after the abortive coup on 1 December 1989 had been taken by the Government, under the Constitution, in order to combat speculation and the manipulation of basic commodity prices. The Philippine Congress had authorized the President to take over privately-owned utilities or businesses in the public interest, to control prices, protect the population against speculators and take other economic measures. None of the fundamental human rights had been suspended and the duration of the state of emergency was limited; it was neither a prelude to nor a declaration of martial law. Her delegation reserved the right to reply at a later stage to any comments made on the subject by non-governmental organizations.

33. Mr. NAUMOVSKI (Yugoslavia) said that Mr. Kooijmans' methodology of collecting allegations and processing them directly with Governments was a commendable one. The further strengthening of the co-operation between Governments and the Special Rapporteur appeared to be crucial and his delegation would support any efforts by the latter to extend and increase his contacts with them.

34. The systematic practice of torture and other cruel, inhuman or degrading treatment throughout the world called for organized action by the international community. His country thought that the comments and findings in the report (E/CN.4/1990/17 and Add.1) were instructive with a view to eliminating the sources of violations and his delegation supported the recommendations, particularly those on education. Education should be emphasized and even the Commission's deliberations might be regarded as contributing to the educational process. It should always be borne in mind that the Commission should deal with the practices of government agencies rather than with legal provisions. The Special Rapporteur should be able to assist Governments in bringing the law and practice into line. In that connection, the link between the Judiciary and the police was crucial and the Special Rapporteur had rightly stressed the importance of the Body of Principles for the protection of prisoners. Yugoslavia had already signed the Convention against Torture and begun the ratification procedure. It had

undertaken to reassess its criminal and other legislation in order to bring it in line with the broader democratic reforms taking place in society and to abolish the death penalty.

35. Regarding the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/L.13), it was obvious that the Working Group had extended its scope for dealing with the problem, one of the most important elements being the co-operation by Governments. However, since the problem of disappearances had not diminished, the Working Group would have to develop new more effective approaches to Governments and new forms of co-operation with them. In conclusion, his delegation supported the extension of the mandates of the Special Rapporteurs.

36. Mr. SCHERK (Austria) recalled that the international community had taken many measures to combat torture and other cruel, inhuman or degrading treatment or punishment, such as the inclusion of the question of the human rights of all persons subjected to any form of detention and imprisonment, on the Commission's agenda, for the seventh time, the adoption of a Declaration and a Convention against Torture, a Code of Conduct for Law Enforcement Officials and of a Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. However, torture remained a common phenomenon which called for constant vigilance. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment had been ratified in 1989 by nine additional States but only one third of the States Members of the United Nations were parties to it. He hoped that the number of parties would increase rapidly and that more States would recognize the competence of the Committee against Torture to consider communications, whether from individuals or from States. The Secretary-General should include a list of the States that did not recognize the Committee's competence in his annual report on the status of the Convention.

37. At its two sessions in 1989, the Committee against Torture had considered an impressive number of reports. The Committee had an important role to play, provided that the Convention was widely ratified and Governments complied with their obligations. A committee had been established under the European Convention for the Prevention of Torture whose members could visit any place where persons were deprived of their freedom, without the prior permission of the Government involved. It would be a good idea if the Commission could discuss the idea of such preventive and periodic visits world wide, on the basis of the proposal submitted by Costa Rica in 1980.

38. Although Mr. Kooijmans had noted in his excellent report that there had been hopeful developments in a considerable number of countries over the past few years, he also observed that, in 1989, he had been in contact with 48 Governments with respect to cases of torture and that there was an alarming number of cases involving children and juveniles. His visits to Guatemala, Honduras and Zaire at the invitation of those Governments should be noted and he hoped that Mr. Kooijmans' recommendations would provide guidelines for improving the legal framework in those countries as well as its practical implementation. His delegation appreciated the fact that the Governments of the Republic of Korea and of Turkey had informed the Special Rapporteur of the measures they had taken to implement his recommendations. The fruitful co-operation between the Special Rapporteur and the Committee against Torture should be supported. Austria made regular contributions, which it hoped to

increase, to the United Nations Voluntary Fund for Victims of Torture and in order to complement the struggle against torture by assisting victims and their families.

39. Austria had recently been accused by a non-governmental organization of condoning police brutality. The allegations had been brought by the Austrian Ombudsman to the attention of the Government and had been discussed in Parliament. The Ministry of the Interior had said that cases of ill-treatment whatever their number, were unacceptable and must be investigated by an independent judge and that if the cases were substantiated, the perpetrators would be brought to justice. He had also announced a series of legislative and other measures designed to prevent the recurrence of such cases, such as a revision of the penal procedure, improved training of police officers, unannounced visits to police stations, informing every detainee about his rights, etc. The Government of Austria firmly believed that the dignity of the human being must be respected and was determined not to condone any acts incompatible with its human rights commitments.

40. Austria endorsed the conclusions of the Working Group on Enforced or Involuntary Disappearances that enforced disappearances warranted the Commission's unstinting attention. The Working Group had published an excellent report and it had sought to clarify the cases brought to its attention - some 700 cases in 1989, compared with 400 in 1988 was alarming. Cases of disappearance were concentrated mainly in a few countries, especially Peru. The Working Group examined cases promptly and directly and insisted that all cases should be investigated and that those responsible should be prosecuted to the full extent of the law. The delegation of Austria fully endorsed such measures. In view of the fact that prevention was important, in that area as in others, the country-specific recommendations of the Working Group should be followed up and the Group should therefore be given the necessary human and financial resources.

41. His delegation continued to attach considerable importance to the administration of justice, an area in which there was a large number of international standards, albeit insufficiently implemented at the national or individual level. Assistance measures to transform those standards into national legislation might therefore be timely. Austria, which had long opposed capital punishment, welcomed the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights. It hoped that a large number of States, would accede to it and thus move closer to the abolition of the death penalty.

42. Mrs. EZZ (Observer for Egypt) said that her country established a close link between the issues discussed under agenda item 10, namely, protection of justice and protection of human rights. The Egyptian Constitution safeguarded human rights, especially section 3 on the freedoms, rights and obligations of citizens, and articles 40 and 41 which established the equality of all citizens before the law and protected individual freedoms. Furthermore, Egypt had made a point of acceding to the international instruments and covenants that defended human rights. Her country had been one of the first to ratify the Convention against Torture, without reservation in 1986; the Convention had therefore acquired the force of internal law and it complemented national legislation prohibiting torture. In its first report submitted in April 1989, Egypt had explained the measures it had taken to enforce the Convention. She appealed to all countries in the international community to contribute to the

United Nations Voluntary Fund for Victims of Torture. In order to provide emergency assistance and medical care to the victims, the Fund should have permanent and regular resources and should not depend solely on voluntary contributions.

43. The considerable importance that Egypt attached to the independence of the judiciary was reflected in section 4 of the Constitution. Consequently, Egypt approved the draft declaration on the independence and impartiality of the judiciary, juries and assessors and independence of lawyers, which appeared in document E/CN.4/Sub.2/1988/20/Add.1. It associated itself with those who requested that model legislation should be drafted to ensure the effective application of standards for the administration of justice. Such laws which would help to guarantee the protection of human rights nationally and they could also be the subject of expert services programmes and in training programmes for national executives.

44. She welcomed the two reports submitted to the Commission, and noted with satisfaction that Mr. Mazilu was present and requested the international community to ensure the protection of international civil servants. She approved the draft declaration on the protection of all persons against enforced or involuntary disappearance and urged all States to accede to the Convention against Torture, to discharge their obligations under that Convention and provide the Committee against Torture with the necessary financial resources to enable it to carry out its mandate.

45. Mr. NAZIH (Observer for Lebanon) considered that the section on Lebanon in the Report of the Working Group on Enforced or Involuntary Disappearances came as no surprise, in that a state of war was an abnormal situation during which tragedies were bound to occur. The Government of Lebanon, especially the Ministry of Justice, had taken the report very seriously. Lebanon was trying to fulfil its obligations, like other States, notwithstanding the situation in the country; it was profoundly devoted to humanitarian values and had respected them from time immemorial.

46. In the past a land of civilization, a country which had taken part in drawing up the Universal Declaration of Human Rights, where over 12 different communities had always coexisted in peace and harmony and had been an example of tolerance and brotherhood in a democracy that respected fundamental freedoms, Lebanon had today become a land of death and suffering because, like its Arab brothers, it had been confronted with the aftermath of colonialism and its most dangerous legacy, the State of Israel. Before 1948, Israel had not existed but there had been Palestine and its people. The do-gooders who presided at the birth of Israel were not concerned about the rights of the Palestinian people in exile. The contemporary tragedies and the violations of human rights occurring in Lebanon were a direct result of the deliberate decision to ignore the root cause of the problem, the violation of the historic rights of the Palestinian people. The NGOs that came to the Commission and levelled accusations against the Arab States and their leaders overlooked the fact that there would have been no tragedy today if there had not been first the tragedy of the Palestinians and if Palestine had remained a land of peace. He reminded the NGOs that the former Israeli Prime Minister, a Nobel Peace Prize winner, the current Prime Minister and others, had been terrorists and he recounted the long list of Palestinians who had been murdered. If the leaders of Islam were being called upon to condemn terrorism, the leaders of Judaism should be required to do the same.

47. The Government of Lebanon, which had repeatedly expressed its regret at the deaths of foreign or Lebanese civilians on its territory, considered that the hostage problem could not be separated from the wider tragedy. The international community should give the question of Lebanese detainees in Israel the importance it deserved if it did not wish the violence to escalate even more. The Government of Lebanon had sent many notes to the Centre for Human Rights, on 4 and 28 July, 8 November, 16 and 20 December 1988 and 7 August 1989 about the abductions and detentions. The problem of the hostages and detainees could only be resolved by allowing the legal authority in Lebanon to regain its sovereignty and enforce law and order throughout all of Lebanon. Lastly, he recalled that Israel had handed over a Lebanese national, Mrs. Bechara, to the army in South Lebanon, which was keeping her in prison at the risk of her life, despite requests for her release by the Centre for Human Rights.

48. Mr. FLACHE (World Federation for Mental Health) drew attention to the flagrant violations of human rights of thousands of inmates in psychiatric hospitals in Greece, including the one on the island of Leros. The Federation, the Commission of the European Communities and numerous visitors and experts had alerted the Greek authorities and public to the situation and a group of experts set up by the Commission of the Communities had submitted a report, in which it proposed a series of reforms to take place over a period of four years in each of the 10 Greek psychiatric hospitals concerned. The cost of that reform, which was ECU 60 million, was expected to be financed half by the Commission and half by the Government of Greece. At the end of 1988, only one third of that amount had been committed and spent but no significant progress had been observed. The situation remained deplorable in most Greek psychiatric hospitals. Further information would be submitted to the Commission in writing for discussion under agenda item 14. However, the Federation requested the Commission to make representations forthwith as a matter of urgency to the Greek authorities.

49. Mr. STEEL (United Kingdom) said that he would deal with three matters only under agenda item 10, namely, torture, disappearances and freedom of expression.

50. With respect to torture, others had described what it was like to be tortured. It would be comforting to think that a practice, so universally detested and so generally recognized as degrading for those who inflicted it, was becoming a thing of the past. But the factual, systematic and sober report by Mr. Kooijmans showed that the reality was wholly different and that torture still remained a common phenomenon in today's world. Among the particularly horrifying details noted by the Special Rapporteur was the fact that children and juveniles were being tortured; such an idea was mind-boggling because those events were taking place at about the same time as the adoption by the international community of the Convention on the Rights of the Child. The previous year, the Commission had approved the activities of the Special Rapporteur whose tasks included dealing with urgent action cases. He had thought it right to take up 51 cases for immediate action with the Governments concerned; 13 of those Governments had replied and 3 of them were members of the Commission. Other less urgent cases had been submitted to 42 countries, 17 of which had not replied by December 1989 and which included 5 members of the Commission. Those States owed the Commission an explanation.

51. The Working Group on Enforced or Involuntary Disappearances had submitted an excellent report (E/CN.4/1990/13), but he wished to draw special attention to its conclusions. In paragraph 338, for example, it was reported that those "disappearances constitute the most comprehensive denial of human rights of our time ... (and) should continue to warrant the unstinting attention of the international community and in particular that of the Commission on Human Rights". The Working Group had also made some very interesting observations on the different approaches which different Governments had chosen in replying to the Working Group's communications. Although only a few countries had never replied, even a few was too many. His delegation endorsed the Working Group's suggestion that the Commission should accord priority at its current session, to the follow-up action taken by Governments on the Working Group's recommendations.

52. Finally, on the topic of freedom of expression, he found Mr. Türk's succinct report (E/CN.4/Sub.2/1989/26) as well as his very lucid explanation of the relation between the Sub-Commission and the Commission very useful. Mr. Türk had demonstrated the centrality of the right to freedom of expression to all other political and civil rights - freedom of thought, conscience and religion, freedom of assembly and association and the right to take part in government - and also its centrality to economic, social and cultural rights and the right of peoples to self-determination. He also showed that the right to freedom of opinion and expression and the political processes in society were closely intertwined. His delegation had also always been of the opinion that the exercise and full enjoyment of all human rights necessarily depended on freedom of expression. Conversely, if full freedom of expression existed in a society, the absence of other human rights could not be long maintained. Freedom of expression was the key to all the endeavours of the Commission.

53. Mr. LEMINE (Observer for Mauritania), speaking in exercise of the right of reply, said that torture was a violation of Mauritanian criminal law and that, on the whole, Mauritanian legislation conformed to international human rights standards. No one could be detained without good reason and in conformity with the procedures established by Mauritanian law and its supervisory mechanisms, which ensured the strict application of the rules and investigated any allegations acknowledged to be justified. Anyone living on Mauritanian territory could assert those rights, and, a fortiori, Mauritanian citizens who benefited without any distinction, from equal protection under the law. The reference to colour was not a relevant argument because Mauritanian society was very mixed and imbued with the absolute values of unlimited tolerance and equality. Those values constituted the very quintessence of Islam which was the religion of all Mauritanians.

54. While Mauritanian law recognized and guaranteed freedom, security and dignity of the person, it was also designed to ensure the promotion and protection of human rights. Quite recently, that concern had been seen when a prisoner was pardoned and the decision was taken to accede to International Covenants on Human Rights. The Optional Protocol to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Mauritania also co-operated with the Centre for Human Rights. For example, in its reply of 17 January 1990, it had given the Special Rapporteur on torture all the necessary explanations and Mauritania was also willing to co-operate with all those who were working objectively and constructively to promote human rights.

55. Mr. BENHIMA (Morocco), speaking in exercise of the right to reply, noted that paragraphs 218 to 221, and especially paragraph 219 of the Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1990/13) did not reflect the tenor of the two letters addressed by the Chairman of the Group to the Mission of Morocco on 22 and 27 December 1989 and that confusion and misunderstandings could arise. In a preliminary reply dated 26 January 1990 addressed to the Chairman of the Working Group, through the Centre for Human Rights, Morocco had provided specific information about the alleged disappearances. It had always co-operated with the existing human rights mechanisms and spared no effort to provide clarifications and information, which were verified by the competent authorities, in respect of any allegations brought to its attention. He referred, in particular, to its reply of 11 November 1986, initially considered unconvincing by the Working Group, which had subsequently advised that the case had been clarified. His delegation was ready to furnish the Chairman of the Working Group with any further information it might wish.

56. Some NGOs had spoken of violation of the freedom of expression and opinion, in the case of students, as if there had been deliberate action on the part of the Moroccan Government. Those NGOs had distorted the incidents which had occurred as a result of the extreme behaviour of a minority of students towards their colleagues. There had been clashes, restrictions on individual freedom, damage to school buildings, attacks on the physical integrity of the students and staff of institutions and of anyone who tried to separate the opponents and restore law and order. The events had occurred too recently for any comment to be made on the legal decisions without influencing the normal course of events. The persons involved should, for example, exhaust all the remedies offered by the Moroccan criminal procedure. Morocco was a country that respected the principles of freedom, of conscience and of opinion guaranteed by the Moroccan Constitution and therefore, could not allow any elements to take it upon themselves to sow disorder in schools and universities by trying to impose their opinion on others by violence.

57. The same NGOs had complained about the situation of some detainees who had gone on hunger strike and about the practice of ill-treatment. In fact, three or four detainees who had been tried and sentenced had gone on a hunger strike but there was the broader problem of the management of the prison population that was being faced by prison administrations the world over. The problem was one that needed to be studied very carefully, in order to avoid calling the sentence into question: a detainee could not be released on purely medical grounds or because he was on strike. The prison administration was required to assure physical and mental integrity and to provide them with the medical care his state of health necessitated. It was to preserve the right to life of those three or four detainees and to guarantee their physical and intellectual integrity that the medical services were supervising their food and health. As far as the allegations of ill-treatment were concerned, they were at most isolated acts or unfortunate mistakes. There could not have been any systematic practice as some NGOs claimed. The Moroccan Criminal Code severely punished acts of torture, illegal imprisonment or abuse of authority committed by law enforcement agents very severely; only recently, two agents had been sentenced for illegal detention and cruelty. The prison administration was striving to improve the conditions in detention of the entire prison population in Morocco.

58. Lastly, in answer to the representative of the Centre Europe Tiers Monde (CETIM), that hireling who would say anything, he referred her to the interview given to the magazine Jeune Afrique by Mr. Omar Hadrami, the ideologist and head of military security of the POLISARIO Front who had returned to Morocco last August, and also to the recent press conference given by six members of POLISARIO, who had fled from the POLISARIO camps and had appealed to humanitarian organizations to look into the systematic violations of human rights by the POLISARIO Front against any of their hostages who expressed a desire to return to their province of origin.

The meeting rose at 9.10 p.m.